NO. HHB CV15-6028413S	:	STATE OF CONNECTICUT
TOWN OF STONINGTON	:	SUPERIOR COURT
v.	:	JUDICIAL DISTRICT OF NEW BRITAIN
STATE BOARD OF LABOR RELATIONS	:	MARCH 27, 2015

Ruling on Motion to Dismiss

The defendant state board of labor relations (state board) moves to dismiss the appeal of the plaintiff, the town of Stonington, from the state board's decision granting a petition of the UE Local 222, CILU/CIPU (union) to modify an existing bargaining unit of town employees to include the position of highway supervisor. The court agrees with the state board that the court lacks jurisdiction over the appeal. Accordingly, the court grants the motion to dismiss.

Appeals to courts from administrative agencies exist only under statutory authority. See *Connelly v. Commissioner of Correction,* 149 Conn. App. 808, 812, 89 A.3d 468 (2014). In this case, the statute creating a right to appeal from the state board is General Statutes § 31-109 (d). Section 31-109 (d) provides that "[a]ny person aggrieved by a final order of the board granting or denying in whole or in part the relief sought may appeal pursuant to the provisions of chapter 54 to the superior court for the judicial district where the unfair labor practice was alleged to have occurred, in the judicial district of Hartford, or in the judicial district wherein such person resides or transacts business." The reference to chapter 54 of the General Statutes is to the Uniform Administrative Procedure Act. See General Statutes § 4-166 et seq.

In *Windsor v. Windsor Police Department Employees Assn.,* 154 Conn 530, 227 A.2d 65 (1967), our Supreme Court interpreted a prior, but substantively identical, version of § 31-109 (d)

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to mean that "there is statutory provision for appeal from an order of the board only when that order is a final order of the board and when an unfair labor practice is alleged to have occurred." Id., 535.[1] The Court nonetheless recognized that, following case law decided under the National Labor Relations Act, 29 U.S.C. §§ 151 et seq., "[u]nder extraordinary circumstances" there could be immediate judicial review in cases where the state board has acted "in excess of its delegated powers, contrary to a specific statutory prohibition and where there have been public questions of international complexion." Id., 537-38 (citing *Leedom v. Kyne*, 358 U.S. 184 (1958)). But the Court added that "[t]he *Kyne* exception is a narrow one, not to be extended to permit plenary district court review of Board orders in certification proceedings whenever it can be said that an erroneous assessment of the particular facts before the Board has led it to a conclusion which does not comport with the law." (Internal quotation marks omitted.) Id., 539. In other words, the *Kyne* exception refers only to those extraordinary circumstances in which the state board has taken action that it lacks power to take.

In the present case, the plaintiff does not allege or otherwise claim that the state board's decision is a final order concerning an unfair labor practice. Thus, if this court has jurisdiction, it must fall under the *Kyne* exception. The plaintiff's brief states that the state board acted in excess of its delegated powers and contrary to a specific statutory provision. However, its complaint makes no such allegations. Although the complaint recites the boilerplate allegations that the state board acted in violation of constitutional or statutory provisions and in excess of its

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[1]At the time of the *Windsor Police* decision, § 31-109 (d) differed only with regard to venue: "Any person aggrieved by a final order of the board granting or denying in whole or in part the relief sought may obtain a review of such order in the superior court for the county in which the unfair labor practice was alleged to have occurred." (Internal quotation marks omitted.) Id.

statutory authority, the gravamen of the complaint is that the state board wrongly decided the merits of the petition to modify the existing bargaining unit to include the position of highway supervisor. (Complaint, paras. 12-16.) The complaint does not allege that the state board lacked the power to reach the type of decision that it did.

Even if the court overlooks the absence of qualifying allegations in the complaint, the plaintiff, in its brief, does not cite to any statutes that deprived the state board of the ability to reach a decision to modify a bargaining unit in this case. In an effort to do so, the plaintiff's brief initially cites to General Statutes § 7-471 (4). Section 7-471(4) provides in pertinent part that: "No petition seeking a clarification or modification of an existing unit shall be considered to be timely by the board during the term of a written collective bargaining agreement, except that a petition for clarification or modification filed by an employee organization concerning either (A) a newly created position, or (B) any employee who is not represented by an employee organization, may be filed at any time."[2] Because, in this case, the plaintiff admits that the employee in question was "not represented by an employee organization," (Complaint, para. 2), the bar in § 7-471(4) to the state board's consideration of a petition seeking modification of an

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[2]In full, § 7-471(4) provides that: "The State Board of Labor Relations shall have the following power and authority in relation to collective bargaining in municipal employment: . . . (4) An employee organization or a municipal employer may file a petition with the board seeking a clarification or modification of an existing unit. The power of the board to make such clarifications and modifications shall be limited to those times when a petition for clarification or modification is filed by either an employee organization or a municipal employer. No petition seeking a clarification or modification of an existing unit shall be considered to be timely by the board during the term of a written collective bargaining agreement, except that a petition for clarification or modification filed by an employee organization concerning either (A) a newly created position, or (B) any employee who is not represented by an employee organization, may be filed at any time."

existing bargaining unit during the term of a collective bargaining unit simply does not apply.

The only other statute cited in the plaintiff's brief is General Statutes § 7-476. Section 7-476 provides that "Nothing in sections 7-467 to 7-477, inclusive, is intended to require that the composition of an existing bargaining unit be altered during the term of an existing agreement." This statute, by its terms, permits but does not require the state board to consider a petition to alter the composition of an existing bargaining unit during the term of a collective bargaining agreement. The statute, however, nowhere acts as a prohibition on the state board taking such action.[3] Accordingly, because the plaintiff neither alleges nor cites any basis to conclude that the state board acted "in excess of its delegated powers [or] contrary to a specific statutory prohibition"; *Windsor v. Windsor Police Department Employees Assn.*, supra, 154 Conn 538; the court lacks jurisdiction to hear this appeal.

The court grants the motion to dismiss.

It is so ordered.

Schuman, J.

Carl J. Schuman
Judge, Superior Court

[3]To the extent that the decision in *Hamden Board of Education v. Connecticut State Board of Labor Relations,* Superior Court, Judicial District of New Britain, Docket No. HHB CV 06-4010196S (September 15, 2006) is to the contrary, the court respectfully disagrees with that decision.